

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:) Chapter 15 Case
)
FAIRFIELD SENTRY LIMITED, et al.,) Case No. 10-13164 (SMB)
)
Debtors in Foreign Proceedings.) Jointly Administered
)
FAIRFIELD SENTRY LIMITED, et al. (In)
Official Liquidation), acting by and through the Foreign)
Representatives thereof,) Adv. Pro. No. 10-03496
) (SMB)
Plaintiffs,)
) Administratively
-against-) Consolidated
)
THEODOOR GGC AMSTERDAM, et al.,)
)
Defendants.)
FAIRFIELD SENTRY LIMITED (IN LIQUIDATION))
and FAIRFIELD SIGMA LIMITED (IN LIQUIDATION),)
acting by and through the Foreign Representatives thereof,)
and KENNETH KRYSS and CHARLOTTE CAULFIELD,)
solely in their capacities as Foreign Representatives and) Adv. Pro. No. 10-03635
Liquidators thereof,) (SMB)
Plaintiffs,)
)
-against-)
)
ABN AMRO SCHWEIZ AG a/k/a ABN AMRO)
(SWITZERLAND) AG, ADLER AND CO PRIVATBANK)
AG, ALLIANZBANK SPA/UNIFORTUNE)
CONSERVATIVE SIDE POCKET, ALTERNATIVE)
INVESTMENT STRATEGIES, ARSENAL SPC,)
ARSENAL SPC OBO GLASGOW SEG PORT, BANCA)
ARNER SA, BANCA UNIONE DI CREDITO, BANK)
HAPOALIM SWITZERLAND LTD., BANK JULIUS)
BAER & CO. LTD., BANK SARASIN & CIE, BANQUE)
CANTONALE VAUDOISE, BANQUE CRAMER & CIE)
SA, BBVA (SUISSE) SA, BGV AMC DEFENSIVE AL)
FUND, BNP PARIBAS (SUISSE) SA, BNP PARIBAS)
(SUISSE) SA EX FORTIS, BNP PARIBAS (SUISSE) SA)
PRIVATE, BSI AG, BSI EX BANCA DEL GOTTARDO,)
CACEIS BANK LUXEMBOURG, CBB (BVI)/ THE)
ALKIMA FUND, CBT GEMS LOW VOL REG,)

COMPAGNIE BANCAIRE HELVETIQUE, CENTRUM)
BANK AG (AMS), CLARIDEN LEU LTD., CORNER)
BANCA SA, CREDIT SUISSE AG ZURICH, DEXIA)
BANQUE INTERNATIONALE A, LUXEMBOURG,)
DRESDNER BANK SCHWEIZ, EFG BANK SA)
SWITZERLAND, EFG EUROFINANCIER D'INVEST)
MCL, ENDURANCE ABSOLUTE LTD. MASTER,)
FAIRFIELD INVESTMENT GCI, FAIRFIELD)
INVESTMENT FUND LTD., FALCON PRIVATE BANK,)
FIF ADVANCED LTD., FINTER BANK ZURICH,)
HARMONY CAPITAL FUND LTD., HSBC, IHAG)
HANDELSBANK AG, INCORE BANK AG, KARASEL)
ENHANCED PORTFOLIO, KARLA)
MULTISTRATEGIES LTD., LGT BANK IN)
LIECHTENSTEIN AG, LIECHTENSTEINISCHE LB)
REINVEST AMS, LLOYDS TSB BANK GENEVA,)
LOMBARD ODIER DARIER HENTSCH & CIE,)
LONGBOAT LTD., MASTER CAPITAL AND HEDGE)
FUND, NATIONAL BANK OF KUWAIT, NBK BANQUE)
PRIVEE SUISSE SA, PICTET & CIE, PKB)
PRIVATBANK AG, QUASAR FUNDS SPC A/K/A)
QUASAR FUND SPC CLASS A AND CLASS B CGCNV,)
RBC DEXIA INVESTOR SERVICE JULIUS BAER)
SICAV, RBS COUTTS BANK LTD., RICHOURT AAA)
MULTISTRATEGIES, ROTHSCHILD BANK AG)
ZURICH (DUBLIN) A/K/A ROTHSCHILD BANK AG,)
ROTHSCHILD BANK GENEVA (DUBLIN),)
ROTHSCHILD LUGANO DUBLIN A/K/A BANCA)
PRIVATA EDMOND DE ROTHSCHILD LUGANO S.A.,)
SELLA BANK AG, SIS SEEGANINTERSETTLE, SIX)
SIS LTD., SOCIETE GENERALE BANK & TRUST,)
SOUNDVIEW FUND, SWISSCANTO FD CENTRE)
CLIENTS A/C, T1 GLOBAL FUND LTD., UBS AG NEW)
YORK, UBS AG ZURICH, UBS JERSEY NOMINEES,)
VERWALTUNGS UND PRIVAT-BANK AG)
AKTIENGESELLSCHAFT (AMS), VORARLBERGER)
LANDES UND HYPOTHEKENBANK)
AKTIENGESELLSCHAFT AND BENEFICIAL)
OWNERS OF ACCOUNTS HELD IN THE NAME OF)
CGC NA 1-1000,)
)
)
Defendants.)

STIPULATION AND AGREED ORDER TO VACATE ENTRY OF DEFAULT

WHEREAS, on October 10, 2017, Kenneth M. Krys and Charlotte Caulfield, in their capacities as the duly appointed Liquidators and Foreign Representatives of Fairfield Sentry Limited (In Liquidation), Fairfield Sigma Limited (In Liquidation), and Fairfield Lambda Limited (In Liquidation) (the “Liquidators”), filed a request for entry of default against Defendant Banca Unione di Credito (“BUC”) for its failure to plead or otherwise defend the above-captioned Adversary Proceeding [Dkt. No. 353];

WHEREAS, on October 11, 2017, the Clerk entered a default in the above-captioned Adversary Proceeding against BUC [Dkt. No. 376] (the “Entry of Default”);

WHEREAS, BUC did not join the consolidated Motion to Dismiss [Consol. Adv. Pro. 10-03496, Dkt. Nos. 959-964, 991] (the “Consolidated Motion to Dismiss”), or otherwise move to dismiss the claims asserted against it in the above-captioned action by the January 27, 2017 deadline ordered by the Court in the Supplemental Case Management Order [Consol. Adv. Pro. 10-03496, Dkt. No. 918] (the “Case Management Order”);

WHEREAS, BSI AG (“BSI”) moved to dismiss the claims asserted against it in the above-captioned action by the deadline set forth in the Case Management Order and participated in the consolidated briefing in connection with such motion [Case No. 10-03496, ECF No. 959-60, 1457; Case No. 10-03635, ECF No. 170-71, 305];

WHEREAS, BSI, among other defendants, additionally filed (i) FIBCPR Swiss Defendants’ Supplemental Memorandum of Law in Opposition to Plaintiffs’ Motion for Leave to Amend and in Support of Defendants’ Motion to Dismiss [Case No. 10-03496, ECF No. 1245; Case No. 10-03635, ECF No. 220], and (ii) FIBCPR Swiss Defendants’ Supplemental Reply Memorandum of Law in Further Support of Defendants’ Motion to Dismiss [Case No. 10-03496,

ECF No. 1504; Case No. 10-03635, ECF No. 319] (collectively, the “BSI Supplemental Briefing”);

WHEREAS, BUC has now appeared in this action through the undersigned counsel; and

WHEREAS, the Liquidators and BUC have agreed that good cause exists to request that an order be entered pursuant to Federal Rule of Civil Procedure 55(c), made applicable to this Adversary Proceeding by Federal Rule of Bankruptcy Procedure 7055, vacating the Entry of Default against BUC, without prejudice to any rights of the Liquidators to seek the Clerk’s entry of a default in the event of any future default by BUC.

NOW, THEREFORE, it is stipulated and agreed by and between the Liquidators and BUC that:

1. The Clerk’s Entry of Default should be vacated, and the Liquidators’ request for the Clerk’s Entry of Default be withdrawn, without prejudice.

2. BUC agrees that, should it join or attempt to join the Consolidated Motion to Dismiss, it shall not advance or seek to advance any grounds for dismissal not contained in the Consolidated Motion to Dismiss or the BSI Supplemental Briefing, or any argument for dismissal that is specific to BUC. BUC further agrees that it will not file or seek to file a motion to dismiss (or memorandum of law in support of a motion to dismiss) beyond a joinder in the form attached hereto as Exhibit A.

3. The Liquidators consent to BUC filing a joinder in the form attached hereto as Exhibit A, provided that BUC files or seeks to file such joinder within 7 days of the Court so-Ordering this Stipulation.

4. For the avoidance of doubt, the Liquidators hereby reserve all of their rights and positions in connection with the Consolidated Motion to Dismiss and the BSI Supplemental Briefing. For the avoidance of doubt, BUC hereby reserves all of its rights and positions in connection with the Consolidated Motion to Dismiss, the BSI Supplemental Briefing, and the *FNC* Motion to Dismiss.

Dated: New York, New York
May 22, 2018

/s/ David J. Molton
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*Attorneys for Defendant
Banca Unione di Credito*

IT IS SO ORDERED.

Dated: _____, 2018
New York, NY

Hon. Stuart M. Bernstein
United States Bankruptcy Judge

EXHIBIT A

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:

FAIRFIELD SENTRY LIMITED, *et al.*,

Debtors in Foreign Proceedings.

Chapter 15 Case

Case No. 10-13164 (SMB)

(Jointly Administered)

FAIRFIELD SENTRY LIMITED, *et al.* (In
Official Liquidation), acting by and through the Foreign
Representatives thereof,

Plaintiffs,

-against-

THEODOOR GGC AMSTERDAM, *et al.*,

Defendants.

Adv. Pro. No. 10-03496 (SMB)

Administratively Consolidated

This document relates to:

Adv. Pro. Nos. 10-03496, 10-03635, 10-03636

NOTICE OF JOINDER FOR BANCA UNIONE DI CREDITO

PLEASE TAKE NOTICE that Defendant Banca Unione di Credito (“BUC”), through its undersigned attorneys, hereby joins, adopts and incorporates by reference the consolidated Motion to Dismiss (Case No. 10-03496, ECF No. 959-60; Case No. 10-03635, ECF No. 170-71; Case No. 10-03636, ECF No. 189-90) and all related declarations (*see, e.g.*, Case No. 10-03496, ECF Nos. 961-64, 991, 1458). BUC hereby adopts (i) all arguments raised by the defendants in the Consolidated Memorandum of Law in Opposition to Plaintiffs’ Motion for Leave to Amend and in Support of Defendants’ Motion to Dismiss (Case No. 10-03496, ECF No. 960; Case No. 10-03635, ECF No. 171; Case No. 10-03636, ECF No. 190) and (ii) all arguments raised by the

defendants in the Consolidated Reply Memorandum of Law in Further Support of Defendants' Motion to Dismiss (Case No. 10-03496, ECF No. 1457; Case No. 10-03635, ECF No. 305; Case No. 10-03636, ECF No. 335).

PLEASE TAKE FURTHER NOTICE that BUC hereby adopts all arguments raised by defendants BSI AG and BSI Ex Banca Del Gottardo in (i) FIBCPR Swiss Defendants' Supplemental Memorandum of Law in Opposition to Plaintiffs' Motion for Leave to Amend and in Support of Defendants' Motion to Dismiss (Case No. 10-03496, ECF No. 1245; Case No. 10-03635, ECF No. 220; Case No. 10-03636, ECF No. 247), and (ii) FIBCPR Swiss Defendants' Supplemental Reply Memorandum of Law in Further Support of Defendants' Motion to Dismiss (Case No. 10-03496, ECF No. 1504; Case No. 10-03635, ECF No. 319; Case No. 10-03636, ECF No. 351).

WHEREFORE, BUC respectfully requests that the Court deny Plaintiffs' Motion for Leave to Amend, grant Defendants' Motion to Dismiss, and grant any other and further relief the Court deems just and proper.

Dated: April __, 2018
New York, New York

By: _____
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